

## Memorandum 2002-29

### **Exemptions from Enforcement of Money Judgments: Second Decennial Review**

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The Commission is charged with the responsibility of reviewing the dollar amount of debtors' exemptions under the Enforcement of Judgments Law every 10 years and recommending any changes in amounts "that appear proper." See Code Civ. Proc. § 703.120(a). This memorandum reviews the issues involved in discharging the statutory duty in this second decennium following enactment of the Enforcement of Judgments Law in 1982. (The basic exemption provisions under discussion are set out in the attached Exhibit.)

Technically, the decennial periods run from July 1, 1983, the operative date of the Enforcement of Judgments Law. For any revisions to become operative on an approximately decennial basis, the Commission should prepare a recommendation this year so that any implementing legislation could be enacted in 2003 and become operative January 1, 2004.

The Commission's authority is not limited to consideration of exempt dollar amounts. Code of Civil Procedure Section 703.120(b) makes clear that the duty to make a decennial review of exempt amounts does not limit the Commission's authority to "maintain a continuing review of and submit recommendations concerning enforcement of judgments." The Commission is also authorized to study many aspects of creditors' remedies law in its resolution to continue authority. See, e.g., 2001 Cal. Stat. res. ch. 78. Thus, this memorandum also notes several other exemption issues that the Commission may wish to consider.

#### **Background**

The Enforcement of Judgments Law, operative July 1, 1983, was enacted on Commission recommendation. Part of that study involved modernizing the exemption statutes. Exemptions are necessary to protect an amount of property sufficient to support the judgment debtor and the judgment debtor's family and to facilitate the financial rehabilitation of the judgment debtor. See, generally, *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L.

Revision Comm'n Reports 2001, 2075-100 (1980); *1982 Creditors' Remedies Legislation*, 16 Cal. L. Revision Comm'n Reports 1001, 1079-109 (1982).

Exemptions based on need or defined in terms of a type of property are immune from inflation, although overly specific exemptions can become obsolete as times change. Exemptions in a fixed dollar amount are subject to degradation as the purchasing power of the dollar shrinks. The Commission dealt with these issues when preparing the Enforcement of Judgments Law by modernizing and generalizing exemptions, and increasing some fixed-amount exemptions to adjust for inflation. For example, in 1980 the motor vehicle exemption was \$500; the Commission recommended that it be doubled to \$1000; and as finally enacted in 1982, the exemption was set at \$1200, probably for conformity with the federal bankruptcy exemption. In 1994, the motor vehicle exemption was increased to \$1900, as a compromise from the Commission's initial proposal to double the amount to \$2400. (The bankruptcy motor vehicle exemption is now \$2775.) In 1982, a new maximum amount was set for jewelry, heirlooms, and works of art (\$2500), which had been governed by a much criticized station-in-life test under prior law. This exemption was doubled to \$5000 in 1994.

Exemptions in fixed dollar amounts have the virtue of certainty and they help prevent abuse that can occur where specific items of property are exempt without dollar limits. On the other hand, legislatures have historically been slow to adjust exempt amounts. Some also argue that there is an important public policy involved in the Legislature deciding which specific kinds of property should be shielded from creditors, rather than providing the degree of flexibility permitted in bankruptcy. Generally speaking, exemption amounts reflect political compromises between debtor and creditor interests and do not necessarily have any empirical relation to the reality of what an individual debtor needs to survive financially.

The history of the deposit account exemption in California illustrates the interplay of academic theory, industry lobbying, and politics. In 1901, the California law provided a savings and loan account exemption of \$1000 (which would be over \$20,000 today). In addition, by 1939 there was a \$1500 credit union account exemption, such that a debtor in 1940 could protect over \$30,000 in today's dollars. The Commission concluded that a generalized deposit account exemption would be best, but in recognition of the history of the special categories of account exemptions, in 1981 the Commission recommended addition of a \$250 bank account exemption and the reduction of the other

exemptions by half. However, even this compromise failed in the Legislature, resulting in a smashing success for the creditor lobby: Not only was the proposed \$250 bank account exemption rejected, the special deposit account exemptions were also repealed, leaving only the social security direct deposit exemption, dating from 1976. Debtors were afforded limited protection by a new exemption for earnings paid within the previous 30 days, and a rule permitting tracing of other exempt amounts. (See Code Civ. Proc. §§ 703.080, 704.070, Exhibit pp. 4, 9, respectively.) The end result, however, is that judgment debtors today can protect about \$6000 less in deposit accounts than they could in 1980.

### **Distinctions Between Enforcement Exemptions and Bankruptcy Exemptions**

The interplay of state and federal exemption schemes is an important factor in this review.

#### *Purpose*

The general purpose of state judgment enforcement exemptions and federal consumer bankruptcy exemptions is the same: to allow the debtor to retain some property free from creditors' claims so that the debtor can support his or her family and have a chance at a "fresh start." Making every piece of the debtor's property available to creditors would also have the undesirable effect of shifting costs to the social welfare system. Commentators on bankruptcy law tend to emphasize the fresh start aspect, while there may be more a sense of saving the debtor from being driven to the wall in discussions of state judgment enforcement exemptions. Significantly, consumer bankruptcies under Chapter 7 result in debt discharge and a shield from creditors, whereas enforcement of judgments under state law is largely a private affair conducted by individual creditors pursuing debtors.

#### *Exemption Opt-Out and Alternative Exemption Sets*

Pursuant to authority currently granted by the Bankruptcy Code, state judgment enforcement exemptions are available in bankruptcy, depending on whether a state has opted out of the federal exemptions. See 11 U.S.C. § 522(b)(1). Logically, then, there should be two possible exemptions schemes, depending on whether a state has opted out: (1) in opt-out states, the same set of state exemptions would apply to both judgment enforcement and consumer bankruptcy; (2) in non-opt-out states, the state exemptions would apply in

judgment enforcement proceedings and the federal Section 522(d) exemptions would apply in bankruptcy.

However, California has pioneered a hybrid approach whereby the state opts out of the federal exemptions by way of Code of Civil Procedure Section 703.130 (Exhibit p. 6), but then provides a mirror set of alternative exemptions applicable *only* in bankruptcy in Code of Civil Procedure Section 703.140 (Exhibit pp. 6-7). California bankruptcy filers thus have the option of choosing the state enforcement set or the bankruptcy alternative set, and joint filers are required to select the same set to avoid “stacking,” the practice of one spouse taking the homestead exemption under state law (\$50,000-\$125,000 under Code Civ. Proc. § 704.730, Exhibit p. 19) and the other spouse taking the wildcard and cash exemptions under federal law (\$18,350 under Code Civ. Proc. § 703.140(b)(1) & (5), Exhibit p. 6). For individual debtors, the choice of exemption sets will also largely depend on whether the debtor has a homestead.

#### *Procedural Differences*

The differences in the procedural context between bankruptcy and judgment enforcement are also significant for our purposes. Chapter 7 consumer bankruptcy (discharge) is sought by the debtor. The applicable law and exemptions are generally determined when the debtor files in bankruptcy, and the filer achieves immediate relief from debt enforcement activities. The

The judgment enforcement process under state law is more of a contest, a potentially lengthy game of hide and seek, between the creditor who is trying to discover and levy on the debtor’s property, while the debtor may be trying to hide property or at least complicate the creditor’s access to it. Post-judgment enforcement is generally a ministerial function of levying officers and process servers, unless the creditor needs to resort to special proceedings such as debtor examinations, creditor’s suits, or assignment orders, etc. (See Code Civ. Proc. §§ 708.110 *et seq.* , 708.210 *et seq.* 708.510 *et seq.*) There is no one point in time, as there is in bankruptcy, when the applicable exemptions are determined; exemptions are applied to specific property depending on the time when the creditor’s lien attached to the property claimed to be exempt. (See Code Civ. Proc. § 703.050, Exhibit p. 3.) Judgment enforcement may extend over decades, as long as the creditor files the necessary renewal documents, and may lie dormant for years while the creditor waits for some new information that can lead to discovery of property to be applied to satisfaction of the judgment.

## **Changes in Exempt Amounts Since 1994**

There have been three areas of amendment in the exemptions provisions in the Enforcement of Judgments Law since the Commission last reviewed this subject.

### *Homestead*

The homestead exemption gets the most legislative attention in the exemption field because of the obvious importance of the home, the high level of the exemption, and the existence of interest groups that can effectively sponsor legislation. As amended in 1997, Code of Civil Procedure Section 704.730 provides a three-tier homestead exemption in the following amounts: a \$50,000 basic exemption, unless a special rule applies to the resident judgment debtor or spouse; a \$75,000 “family” exemption; and a \$125,000 elder or disabled exemption. (See Exhibit p. 19.) There are a number of technical rules applicable to qualifying for the highest exemption, but they don’t concern us here.

Under the Enforcement of Judgments Law as enacted in 1982, the basic homestead exemption in Section 704.730 was \$30,000 (for a single resident or where all residents were debtors) with a special exemption of \$45,000 for family units and persons over 65. In 1986, a \$60,000 exemption was added where a resident was over 65 or disabled. In 1988, the third tier exemption was increased from \$60,000 to \$75,000. In 1990, all three tiers were increased, to \$50,000, \$75,000, and \$100,000, respectively. As introduced, the 1997 bill that increased the top tier to \$125,000 had also proposed to increase the first and second tiers to \$75,000 and \$100,000 respectively. See AB 451 (1997-98 Session), as introduced, Feb. 24, 1997.

In light of the recent legislative attention to the homestead exemption and the controversial nature of past efforts to reform this area of the law, **the staff does not recommend that the Commission attempt reforming the homestead exemption.**

### *Personal Property Exemptions*

No other state enforcement exemptions have been adjusted in amount since the 1994 amendments, although a new exemption was added in 1998 (operative Jan. 1, 2000) to provide protection for deposit accounts into which public benefits are deposited, in the amount of \$1,000 or \$1,500. (Code Civ. Proc. § 704.080, Exhibit p. 10.) This exemption is analogous to the exemption for directly deposited social security payments and was incorporated into the same section.

Because the public benefit direct deposit exemption was recently created, and the social security direct deposit exemption was quadrupled in the Commission's 1994 bill, **the staff does not recommend any additional changes in the Section 704.080 exemptions.**

#### *Alternative Bankruptcy Exemptions*

The Commission's 1994 bill updated the alternative bankruptcy exemptions in Code of Civil Procedure Section 703.140 to conform to the federal Bankruptcy Code amounts then in effect. Since Bankruptcy Code Section 104(b) (as amended in 1998) provides an automatic triennial cost of living adjustment, it was inevitable that the California alternative bankruptcy exemptions would soon be inconsistent. This problem was remedied in 2001, however, when the state alternative bankruptcy exemptions were again made consistent with the federal amounts in effect on April 1, 2001, and the federal cost of living adjustments were adopted by reference, avoiding the need to make future amendments. (See Code Civ. Proc. § 703.140, as amended by 2001 Cal. Stat. ch. 42 (AB 1704), Exhibit p. 7.)

Because these exemptions were revised last year, **the staff does not recommend any additional consideration of the alternative bankruptcy exemptions.**

#### **Adjusting Existing Exemption Amounts**

Leaving aside the homestead exemption, the social security and public benefits direct deposit exemption, and alternative bankruptcy exemptions, the central focus of this memorandum, following the precedent of the prior decennial review, is the remaining personal property exemptions in the Enforcement of Judgments Law that are limited by fixed dollar amounts. Thus, we are not concerned with the wage garnishment exemption in Code of Civil Procedure Section 706.010 *et seq.*, which provides a detailed procedure governing the percentage of employees' earnings that may be withheld to enforce money judgments. Nor do we plan to discuss other exemptions that are not currently subject to monetary limits under state law, such as health aids (Section 704.050, Exhibit p. 9) or cemetery plots (Section 704.200, Exhibit p. 17).

The Enforcement of Judgments Law provides eight personal property exemptions that are subject to dollar limitations. With the exception of the new public benefits direct deposit exemption, which became operative Jan. 1, 2000,

these exempt amounts have not been changed since they were last revised on Commission recommendation in 1995.

The most straightforward reform would be to apply an appropriate cost of living adjustment (COLA) factor to the exempt amounts. The following table lists these exemptions, with their original amount (in 1983), the last revised amount (in 1995, except as noted), and the approximate amount needed to take account of inflation (the 2002 COLA, discussed below). The staff does not recommend applying the COLA to items marked with an asterisk, but the numbers are included for the sake of completeness:

CCP	Type of Property	1983	1995	Notes	2002 COLA
§ 704.010	Motor vehicle	\$1200	\$1900	Not doubled (§ 703.110)	\$2300
§ 704.030	Residential repair materials	\$1000	\$2000	Not doubled (§ 703.110)	\$2425
§ 704.040	Jewelry, heirlooms, art	\$2500	\$5000	Not doubled (§ 703.110)	\$6050
§ 704.060	Tools of trade, business, or profession	\$2500	\$5000	Doubled if spouse engaged in trade, business, or profession	\$6050
§ 704.080	Social Security direct deposits	\$500 \$750	\$2000 \$3000	Second figure applies if more than one direct payee	\$2425* \$3625*
§ 704.080	Public benefits direct deposits		\$1000 \$1500	Second figure applies if more than one direct payee [1998]	\$1075* \$1600*
§ 704.090	Inmate trust funds	\$1000	\$1000	Not doubled (§ 703.110)	\$1200*
§ 704.100	Life insurance loan value	\$4000	\$8000	May be doubled	\$9675

The adjusted amounts in the last column were determined by applying the California Consumer Price Index (CCPI) for all urban consumers. In view of the amount of these exemptions and the slippage in time from the application of the CCPI factor and when a revised exemption would become effective, the choice of which index to use becomes relatively unimportant. In any event, the CCPI was the general factor used in the analysis in the last decennial review. See 25 Cal. L. Revision Comm'n Reports 13-14 (1995).

The CCPI index is 186.1 as of April 2002, where the 1982-1984 index is 100 and the 1995 index is 154. The multiplier for 1995 amounts is 1.21, which results from dividing the current 186.1 index by the 154 index from 1995. The 1995 amounts are then multiplied by 1.21 and rounded to the nearest \$25, following the federal bankruptcy scheme. See California Consumer Price Index Chart (1955-2002), <[http://www.dir.ca.gov/DLSR/statistics\\_research.html](http://www.dir.ca.gov/DLSR/statistics_research.html)>.

**The simplest approach to discharging the Commission's statutory duty would be to apply the COLA to some or all of the existing personal property exemptions,** thereby maintaining the relative balance between debtors and creditors. There is no pretense that the underlying exemption amounts are empirically derived. They are inherited political compromises. But, for the purposes of this study, it is permissible to take the exemptions as we find them, and apply the COLA factor. As noted above in connection with the deposit account exemption and the homestead exemption, efforts to rationalize exemptions are likely to be unsuccessful, particularly where giving a dollar to one class of stakeholders means taking a dollar away from another.

### **Automatic Adjustment of Exemptions Based on Changes in Cost of Living**

In the development of the Enforcement of Judgments Law, the Commission considered recommending enactment of an automatic scheme for adjusting dollar amounts. During this work in the late 1970s, an early version of Bankruptcy Code Section 104 had provided for the automatic adjustment of exemptions every two years, and the Commission was also aware of Section 2 of the Uniform Exemptions Act (1976), which provides for biennial adjustments where there has been a 10% change in the index. The Commission included a COLA provision drawn from the Uniform Exemptions Act in draft tentative recommendations in 1978-79. See, e.g., Memorandums 77-55. 78-6. However, by the time the printed *Tentative Recommendation Relating to Enforcement of Judgments*, 15 Cal. L. Revision Comm'n Reports 2001, was approved in October 1980, the Commission had decided to recommend a five-year duty to review exempt amounts, similar to the decennial duty ultimately enacted. As enacted, of course, Code of Civil Procedure Section 703.120 provides for the decennial review currently underway. However, **the Commission may wish to consider whether another attempt should be made to implement an automatic COLA provision in place of this decennial review.**

Many California statutes provide for some adjustment based on the cost of living. A quick computer search indicates nearly 400 statutory and constitutional provisions refer to the cost of living or the Consumer Price Index. The staff has not researched these statutes in much detail, but it appears that many of them depend for their implementation on an existing regulatory authority with jurisdiction in the area, while others provide for submission of the determined adjustment for legislative approval. Of course, the Commission's decennial

review is a variety of the latter scheme — a review of amounts in light of changes in the value of the dollar submitted for legislative approval.

There is no existing regulatory authority over enforcement of judgments exemptions, although it would be simple enough to mandate that the Judicial Council or some other body make the appropriate determination and certify the resulting changes by rule or regulation. The Bankruptcy Code requires the Judicial Conference of the United States to make the necessary determination and publish it in the Federal Register. See 11 U.S.C. § 104(b). Section 2 of the Uniform Exemptions Act (UEA) provides for adoption of a rule by the “appropriate state official.” The only state we have found that automatically adjusts state exemptions is Minnesota, which appears to have adopted a variation of the UEA scheme and imposes on its state Commissioner of Commerce the duty to determine the adjusted amounts. See Minn. Stat. Ann. § 550.37(4a) (Westlaw 2002). Minnesota does not apply the COLA to its \$13,000 farm implement exemption or its \$13,000 aggregate limit on the combination of farm implements and the \$5000 tools of a trade exemption. *Id.* § 505.37(4a)-(7).

An exemption COLA statute should also set a rounding factor (e.g., to the nearest \$25 or \$50, or the next lowest \$25 or \$50 amount) and the frequency of adjustments. As noted, the UEA provides for a biennial adjustment (if the 10% qualification is satisfied), and the Bankruptcy Code provides a triennial adjustment.

An automatic cost of living adjustment would not need to apply to all monetary exemptions. An obvious candidate for omission is the homestead exemption, which receives periodic legislative attention as discussed above. There may be other exemptions that could appropriately be omitted from an automatic adjustment, such as the inmate trust fund exemption.

Since the Commission last considered these issues in 1994, the federal Bankruptcy Code was amended to provide a triennial COLA, and, as noted, the California alternative bankruptcy exemption statute was amended to mirror the federal amounts and the federal COLA scheme. See 2001 Cal. Stat. ch. 42, § 1. Specifically, subdivision (c) was added to Code of Civil Procedure Section 703.140: “Each dollar amount in effect under this section shall be increased in accordance with the periodic adjustments of similar exemptions provided under federal bankruptcy laws.” It is not crystal clear how this provision will work, since it is short on implementing detail, but that will be a problem for the bankruptcy courts. More detail and administrative clarity would be needed in

the state judgment enforcement context, but it would be possible to adopt the federal COLA scheme and apply it to selected state exemptions. This would result in a consistent COLA adjustment to both sets of California exemptions, but this is only a facial consistency, since the amounts and coverage of the two sets are quite different. In addition, the Commission has used the California CPI, which is currently higher than the national urban consumer CPI used in the federal bankruptcy COLA.

If the Commission is interested in pursuing an automatic COLA scheme, the staff can provide a more detailed analysis for consideration at the next meeting. However, **in light of past experience in this area, the staff suspects any automatic adjustment of exempt amounts would be vigorously opposed** by at least one creditor group. We do not believe last year's adoption of the federal adjustment as to the California bankruptcy exemptions is any strong indicator of willingness to adopt a similar policy for judgment enforcement exemptions.

### **Wildcard Exemption**

A different way to approach the cost of living issue is to provide a new "wildcard" exemption. Rather than increasing exemptions by some multiplier, debtors could be provided with a monetary exemption that can be used for any type of property and combined with other exemptions. Thus, for example, a \$2000 wildcard could be added to the tools of the trade exemption to protect tools worth \$4500. Or a motor vehicle worth \$3200 could be shielded.

As many as 28 states and the federal Bankruptcy Code provide some type of wildcard exemption or permit the debtor to apply the unused portion of the homestead exemption to personal property. Wildcard exemptions vary greatly in amount, from a low of \$100 (Iowa) to \$5500 (Maryland), with amounts around \$500 being most common. The federal bankruptcy wildcard is \$925 plus the unused homestead amount equal to \$17,425. A number of other states provide substitute exemptions from \$500 to \$7500 to debtors who do not claim a homestead.

California judgment enforcement exemptions do not include a homestead substitute to help ameliorate the discrimination against renters. Obviously, addition of a new wildcard exemption or homestead substitute exemption would be opposed by creditor groups. If the lessons are still valid that we learned when attempting to revise the deposit account exemption in 1981-82, revising the exemption amounts in 1994, and in the subsequent attempts to fix the homestead

exemption, it may be foolhardy for the staff to even suggest consideration of this type of exemption.

### **Conclusion**

Proceeding from the assumption that the exemptions were currently set at a politically appropriate level in the 1994 and following revisions, it is clear that the main personal property exemptions have now shrunk to insufficient levels due to changes in the cost of living. The staff recommends increasing the exemptions for (1) motor vehicles, (2) residential repair materials, (3) jewelry, heirlooms, and works of art, (4) tools of a trade, business, or profession, and (5) life insurance loan value, by about one fifth, as set out in the chart *supra*. The staff does not recommend any other revisions in exempt amounts or making any other substantive exemption revisions.

Despite the appeal of an automatic exemption adjustment based on cost of living changes meeting a certain minimum level, the staff (somewhat reluctantly) is not pushing such a scheme. But if the Commission is interested in pursuing the matter, the staff could develop some proposals for further consideration.

If the Commission adopts the simple approach of raising a number of exempt amounts, and/or applying a COLA provision to selected exemptions, the staff can prepare a draft tentative recommendation for consideration at the next meeting.

Respectfully submitted,

Stan Ulrich  
Assistant Executive Secretary





(c) Nothing in this section limits the authority of the court pursuant to Section 473 to relieve a person upon such terms as may be just from failure to claim an exemption within the time and in the manner prescribed in the applicable enforcement procedure.

**§ 703.040. Prior waivers void**

703.040. A purported contractual or other prior waiver of the exemptions provided by this chapter or by any other statute, other than a waiver by failure to claim an exemption required to be claimed or otherwise made at the time enforcement is sought, is against public policy and void.

**§ 703.050. Exemptions in effect at time of lien govern**

703.050. (a) The determination whether property is exempt or the amount of an exemption shall be made by application of the exemption statutes in effect (1) at the time the judgment creditor's lien on the property was created or (2) if the judgment creditor's lien on the property is the latest in a series of overlapping liens created when an earlier lien on the property in favor of the judgment creditor was in effect, at the time the earliest lien in the series of overlapping liens was created.

(b) This section applies to all judgments, whether based upon tort, contract, or other legal theory or cause of action that arose before or after the operative date of this section, and whether the judgment was entered before or after the operative date of this section.

(c) Notwithstanding subdivision (a), in the case of a levy of execution, the procedures to be followed in levying upon, selling, or releasing property, claiming, processing, opposing, and determining exemptions, and paying exemption proceeds, shall be governed by the law in effect at the time the levy of execution is made on the property.

**§ 703.060. Reserved power of state**

703.060. (a) The Legislature finds and declares that generally persons who enter into contracts do not do so in reliance on an assumption that the exemptions in effect at the time of the contract will govern enforcement of any judgment based on the contract, that liens imposed on property are imposed not as a matter of right but as a matter of privilege granted by statute for purposes of priority, that no vested rights with respect to exemptions are created by the making of a contract or imposition of a lien, that application of exemptions and exemption procedures in effect at the time of enforcement of a judgment is essential to the proper balance between the rights of judgment debtors and judgment creditors and has a minimal effect on the economic stability essential for the maintenance of private and public faith in commercial matters, and that it is the policy of the state to treat all judgment debtors equally with respect to exemptions and exemption procedures in effect at the time of enforcement of a money judgment. To this end, the Legislature reserves the right to repeal, alter, or add to the exemptions and the procedures therefor at any time and intends, unless otherwise provided by statute, that any repeals, alterations, or additions apply upon their operative date to enforcement of all money judgments, whether based upon tort, contract, or other legal theory or cause of action that arose before or after the operative date of the repeals, alterations, or additions, whether the judgment was entered before or after the operative date of the repeals, alterations, or additions.

(b) All contracts shall be deemed to have been made and all liens on property shall be deemed to have been created in recognition of the power of the state to repeal, alter, and add to statutes providing for liens and exemptions from the enforcement of money judgments.

**§ 703.070. Exemptions as to support**

703.070. Except as otherwise provided by statute:

(a) The exemptions provided by this chapter or by any other statute apply to a judgment for child, family, or spousal support.

(b) If property is exempt without making a claim, the property is not subject to being applied to the satisfaction of a judgment for child, family, or spousal support.

(c) Except as provided in subdivision (b), if property sought to be applied to the satisfaction of a judgment for child, family, or spousal support is shown to be exempt under subdivision (a) in appropriate proceedings, the court shall, upon noticed motion of the judgment creditor, determine the extent to which the exempt property nevertheless shall be applied to the satisfaction of the judgment. In making this determination, the court shall take into account the needs of the judgment creditor, the needs of the judgment debtor and all the persons the judgment debtor is required to support, and all other relevant circumstances. The court shall effectuate its determination by an order specifying the extent to which the otherwise exempt property is to be applied to the satisfaction of the judgment.

**§ 703.080. Tracing exempt funds**

703.080. (a) Subject to any limitation provided in the particular exemption, a fund that is exempt remains exempt to the extent that it can be traced into deposit accounts or in the form of cash or its equivalent.

(b) The exemption claimant has the burden of tracing an exempt fund.

(c) The tracing of exempt funds in a deposit account shall be by application of the lowest intermediate balance principle unless the exemption claimant or the judgment creditor shows that some other method of tracing would better serve the interests of justice and equity under the circumstances of the case.

**§ 703.090. Costs in case of levy on exempt property**

703.090. If a judgment creditor has failed to oppose a claim of exemption within the time allowed by Section 703.550 or if property has been determined by a court to be exempt, and the judgment creditor thereafter levies upon or otherwise seeks to apply the property toward the satisfaction of the same money judgment, the judgment creditor is not entitled to recover the subsequent costs of collection unless the property is applied to satisfaction of the judgment.

**§ 703.100. Time for determination of exemptions**

703.100. (a) Subject to subdivision (b), the determination whether property is exempt shall be made under the circumstances existing at the earliest of the following times:

(1) The time of levy on the property.

(2) The time of the commencement of court proceedings for the application of the property to the satisfaction of the money judgment.

(3) The time a lien is created under Title 6.5 (commencing with Section 481.010) (attachment) or under this title.

(b) The court, in its discretion, may take into consideration any of the following changes that have occurred between the time of levy or commencement of enforcement proceedings or creation of the lien and the time of the hearing:

(1) A change in the use of the property if the exemption is based upon the use of property and if the property was used for the exempt purpose at the time of the levy or the

commencement of enforcement proceedings or the creation of the lien but is used for a nonexempt purpose at the time of the hearing.

(2) A change in the value of the property if the exemption is based upon the value of property.

(3) A change in the financial circumstances of the judgment debtor and spouse and dependents of the judgment debtor if the exemption is based upon their needs.

**§ 703.110. Application to marital property**

703.110. If the judgment debtor is married:

(a) The exemptions provided by this chapter or by any other statute apply to all property that is subject to enforcement of a money judgment, including the interest of the spouse of the judgment debtor in community property. The fact that one or both spouses are judgment debtors under the judgment or that property sought to be applied to the satisfaction of the judgment is separate or community does not increase or reduce the number or amount of the exemptions. Where the property exempt under a particular exemption is limited to a specified maximum dollar amount, unless the exemption provision specifically provides otherwise, the two spouses together are entitled to one exemption limited to the specified maximum dollar amount, whether one or both of the spouses are judgment debtors under the judgment and whether the property sought to be applied to the satisfaction of the judgment is separate or community.

(b) If an exemption is required by statute to be applied first to property not before the court and then to property before the court, the application of the exemption to property not before the court shall be made to the community property and separate property of both spouses, whether or not such property is subject to enforcement of the money judgment.

(c) If the same exemption is claimed by the judgment debtor and the spouse of the judgment debtor for different property, and the property claimed by one spouse, but not both, is exempt, the exemption shall be applied as the spouses agree. If the spouses are unable to agree, the exemption shall be applied as directed by the court in its discretion.

**§ 703.115. Exemption based on need**

703.115. In determining an exemption based upon the needs of the judgment debtor and the spouse and dependents of the judgment debtor or an exemption based upon the needs of the judgment debtor and the family of the judgment debtor, the court shall take into account all property of the judgment debtor and, to the extent the judgment debtor has a spouse and dependents or family, all property of such spouse and dependents or family, including community property and separate property of the spouse, whether or not such property is subject to enforcement of the money judgment.

**§ 703.120. Review by Law Revision Commission**

703.120. (a) Ten years following the operative date of this title and every 10 years thereafter, the California Law Revision Commission shall review the exempt amounts provided in this chapter and in other statutes and recommend to the Governor and the Legislature any changes in exempt amounts that appear proper.

(b) Nothing in this section precludes the commission from making recommendations concerning exempt amounts more frequently than required by subdivision (a) or from making recommendations concerning any other aspect of this title, and the commission is authorized to maintain a continuing review of and submit recommendations concerning enforcement of judgments.

**§ 703.130. Federal bankruptcy exemption opt-out**

703.130. Pursuant to the authority of paragraph (1) of subsection (b) of Section 522 of Title 11 of the United States Code, the exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code (Bankruptcy) are not authorized in this state.

**§ 703.140. Alternate bankruptcy exemptions**

703.140. (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter, including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:

(1) If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(2) If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(b) The following exemptions may be elected as provided in subdivision (a):

(1) The debtor's aggregate interest, not to exceed seventeen thousand four hundred twenty-five dollars (\$17,425) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed two thousand seven hundred seventy-five dollars (\$2,775) in value, in one motor vehicle.

(3) The debtor's interest, not to exceed four hundred fifty dollars (\$450) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed one thousand one hundred fifty dollars (\$1,150) in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed in value nine hundred twenty-five dollars (\$925) plus any unused amount of the exemption provided under paragraph (1), in any property.

(6) The debtor's aggregate interest, not to exceed one thousand seven hundred fifty dollars (\$1,750) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmaturing life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value nine thousand three hundred dollars (\$9,300), in any accrued dividend or interest under, or loan value of, any unmaturing life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive any of the following:

(A) A social security benefit, unemployment compensation, or a local public assistance benefit.

(B) A veterans' benefit.

(C) A disability, illness, or unemployment benefit.

(D) Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(E) A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:

(i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose.

(ii) The payment is on account of age or length of service.

(iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.

(11) The debtor's right to receive, or property that is traceable to, any of the following:

(A) An award under a crime victim's reparation law.

(B) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(C) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of that individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(D) A payment, not to exceed seventeen thousand four hundred twenty-five dollars (\$17,425), on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.

(E) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(c) Each dollar amount in effect under this section shall be increased in accordance with the periodic adjustments of similar exemptions provided under federal bankruptcy laws.

## Article 2. Procedure for Claiming Exemptions After Levy

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## Article 3. Exempt Property

### § 704.010. Motor vehicles

704.010. (a) Any combination of the following is exempt in the amount of one thousand nine hundred dollars (\$1,900):

- (1) The aggregate equity in motor vehicles.
- (2) The proceeds of an execution sale of a motor vehicle.
- (3) The proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.

(b) Proceeds exempt under subdivision (a) are exempt for a period of 90 days after the time the proceeds are actually received by the judgment debtor.

(c) For the purpose of determining the equity, the fair market value of a motor vehicle shall be determined by reference to used car price guides customarily used by California automobile dealers unless the motor vehicle is not listed in such price guides.

(d) If the judgment debtor has only one motor vehicle and it is sold at an execution sale, the proceeds of the execution sale are exempt in the amount of one thousand nine hundred dollars (\$1,900) without making a claim. The levying officer shall consult and may rely upon the records of the Department of Motor Vehicles in determining whether the judgment debtor has only one motor vehicle. In the case covered by this subdivision, the exemption provided by subdivision (a) is not available.

#### **§ 704.020. Household furnishings and personal effects**

704.020. (a) Household furnishings, appliances, provisions, wearing apparel, and other personal effects are exempt in the following cases:

(1) If ordinarily and reasonably necessary to, and personally used or procured for use by, the judgment debtor and members of the judgment debtor's family at the judgment debtor's principal place of residence.

(2) Where the judgment debtor and the judgment debtor's spouse live separate and apart, if ordinarily and reasonably necessary to, and personally used or procured for use by, the spouse and members of the spouse's family at the spouse's principal place of residence.

(b) In determining whether an item of property is "ordinarily and reasonably necessary" under subdivision (a), the court shall take into account both of the following:

(1) The extent to which the particular type of item is ordinarily found in a household.

(2) Whether the particular item has extraordinary value as compared to the value of items of the same type found in other households.

(c) If an item of property for which an exemption is claimed pursuant to this section is an item of the type ordinarily found in a household but is determined not to be exempt because the item has extraordinary value as compared to the value of items of the same type found in other households, the proceeds obtained at an execution sale of the item are exempt in the amount determined by the court to be a reasonable amount sufficient to purchase a replacement of ordinary value if the court determines that a replacement is reasonably necessary. Proceeds exempt under this subdivision are exempt for a period of 90 days after the proceeds are actually received by the judgment debtor.

#### **§ 704.030. Materials for repair or improvement of dwelling**

704.030. Material that in good faith is about to be applied to the repair or improvement of a residence is exempt if the equity in the material does not exceed two thousand dollars (\$2,000) in the following cases:

(a) If purchased in good faith for use in the repair or improvement of the judgment debtor's principal place of residence.

(b) Where the judgment debtor and the judgment debtor's spouse live separate and apart, if purchased in good faith for use in the repair or improvement of the spouse's principal place of residence.

**§ 704.040. Jewelry, heirlooms, works of art**

704.040. Jewelry, heirlooms, and works of art are exempt to the extent that the aggregate equity therein does not exceed five thousand dollars (\$5,000).

**§ 704.050. Health aids**

704.050. Health aids reasonably necessary to enable the judgment debtor or the spouse or a dependent of the judgment debtor to work or sustain health, and prosthetic and orthopedic appliances, are exempt.

**§ 704.060. Personal property used in trade, business, or profession**

704.060. (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:

(1) Five thousand dollars (\$5,000), if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.

(2) Five thousand dollars (\$5,000), if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.

(3) Ten thousand dollars (\$10,000), if reasonably necessary to and actually used by the judgment debtor and by the spouse of the judgment debtor in the exercise of the same trade, business, or profession by which both earn a livelihood. In the case covered by this paragraph, the exemptions provided in paragraphs (1) and (2) are not available.

(b) If property described in subdivision (a) is sold at an execution sale, or if it has been lost, damaged, or destroyed, the proceeds of the execution sale or of insurance or other indemnification are exempt for a period of 90 days after the proceeds are actually received by the judgment debtor or the judgment debtor's spouse. The amount exempt under this subdivision is the amount specified in subdivision (a) that applies to the particular case less the aggregate equity of any other property to which the exemption provided by subdivision (a) for the particular case has been applied.

(c) Notwithstanding subdivision (a), a motor vehicle is not exempt under subdivision (a) if there is a motor vehicle exempt under Section 704.010 which is reasonably adequate for use in the trade, business, or profession for which the exemption is claimed under this section.

(d) Notwithstanding subdivisions (a) and (b):

(1) The amount of the exemption for a commercial motor vehicle under paragraph (1) or (2) of subdivision (a) is limited to four thousand dollars (\$4,000).

(2) The amount of the exemption for a commercial motor vehicle under paragraph (3) of subdivision (a) is limited to eight thousand dollars (\$8,000).

**§ 704.070. Paid earnings**

704.070. (a) As used in this section:

(1) "Earnings withholding order" means an earnings withholding order under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

(2) "Paid earnings" means earnings as defined in Section 706.011 that were paid to the employee during the 30-day period ending on the date of the levy. For the purposes of this paragraph, where earnings that have been paid to the employee are sought to be subjected to the enforcement of a money judgment other than by a levy, the date of levy

is deemed to be the date the earnings were otherwise subjected to the enforcement of the judgment.

(3) "Earnings assignment order for support" means an earnings assignment order for support as defined in Section 706.011.

(b) Paid earnings that can be traced into deposit accounts or in the form of cash or its equivalent as provided in Section 703.080 are exempt in the following amounts:

(1) All of the paid earnings are exempt if prior to payment to the employee they were subject to an earnings withholding order or an earnings assignment order for support.

(2) Seventy-five percent of the paid earnings that are levied upon or otherwise sought to be subjected to the enforcement of a money judgment are exempt if prior to payment to the employee they were not subject to an earnings withholding order or an earnings assignment order for support.

**§ 704.080. Deposit account in which social security or public benefit payments are directly deposited**

704.080. (a) For the purposes of this section:

(1) "Deposit account" means a deposit account in which payments of public benefits or social security benefits are directly deposited by the government or its agent.

(2) "Social security benefits" means payments authorized by the Social Security Administration for regular retirement and survivors' benefits, supplemental security income benefits, coal miners' health benefits, and disability insurance benefits. "Public benefits" means aid payments authorized pursuant to subdivision (a) of Section 11450 of the Welfare and Institutions Code, payments for supportive services as described in Section 11323.2 of the Welfare and Institutions Code, and general assistance payments made pursuant to Section 17000.5 of the Welfare and Institutions Code.

(b) A deposit account is exempt without making a claim in the following amount:

(1) One thousand dollars (\$1,000) where one depositor is the designated payee of the directly deposited public benefits payments, and two thousand dollars (\$2,000) where one depositor is the designated payee of directly deposited social security payments.

(2) One thousand five hundred dollars (\$1,500) where two or more depositors are the designated payees of the directly deposited public benefits payments, unless those depositors are joint payees of directly deposited payments that represent a benefit to only one of the depositors, in which case the exempt amount is one thousand dollars (\$1,000). Three thousand dollars (\$3,000) where two or more depositors are the designated payees of directly deposited social security payments, unless those depositors are joint payees of directly deposited payments that represent a benefit to only one of the depositors, in which case the exempt amount is two thousand dollars (\$2,000).

(c) The amount of a deposit account that exceeds the exemption provided in subdivision (b) is exempt to the extent that it consists of payments of public benefits or social security benefits.

(d) Notwithstanding Article 5 (commencing with Section 701.010) of Chapter 3, when a deposit account is levied upon or otherwise sought to be subjected to the enforcement of a money judgment, the financial institution that holds the deposit account shall either place the amount that exceeds the exemption provided in subdivision (b) in a suspense account or otherwise prohibit withdrawal of that amount pending notification of the failure of the judgment creditor to file the affidavit required by this section or the judicial determination of the exempt status of the amount. Within 10 business days after the levy, the financial institution shall provide the levying officer with a written notice stating (1) that the deposit account is one in which payments of public benefits or social security

benefits are directly deposited by the government or its agent and (2) the balance of the deposit account that exceeds the exemption provided by subdivision (b). Promptly upon receipt of the notice, the levying officer shall serve the notice on the judgment creditor. Service shall be made personally or by mail.

(e) Notwithstanding the procedure prescribed in Article 2 (commencing with Section 703.510), whether there is an amount exempt under subdivision (c) shall be determined as follows:

(1) Within five days after the levying officer serves the notice on the judgment creditor under subdivision (d), a judgment creditor who desires to claim that the amount is not exempt shall file with the court an affidavit alleging that the amount is not exempt and file a copy with the levying officer. The affidavit shall be in the form of the notice of opposition provided by Section 703.560, and a hearing shall be set and held, and notice given, as provided by Sections 703.570 and 703.580. For the purpose of this subdivision, the “notice of opposition to the claim of exemption” in Sections 703.570 and 703.580 means the affidavit under this subdivision.

(2) If the judgment creditor does not file the affidavit with the levying officer and give notice of hearing pursuant to Section 703.570 within the time provided in paragraph (1), the levying officer shall release the deposit account and shall notify the financial institution.

(3) The affidavit constitutes the pleading of the judgment creditor, subject to the power of the court to permit amendments in the interest of justice. The affidavit is deemed controverted and no counteraffidavit is required.

(4) At a hearing under this subdivision, the judgment debtor has the burden of proving that the excess amount is exempt.

(5) At the conclusion of the hearing, the court by order shall determine whether or not the amount of the deposit account is exempt pursuant to subdivision (c) in whole or in part and shall make an appropriate order for its prompt disposition. No findings are required in a proceeding under this subdivision.

(6) Upon determining the exemption claim for the deposit account under subdivision (c), the court shall immediately transmit a certified copy of the order of the court to the financial institution and to the levying officer. If the order determines that all or part of the excess is exempt under subdivision (c), with respect to the amount of the excess which is exempt, the financial institution shall transfer the exempt excess from the suspense account or otherwise release any restrictions on its withdrawal by the judgment debtor. The transfer or release shall be effected within three business days of the receipt of the certified copy of the court order by the financial institution.

(f) If the judgment debtor claims that a portion of the amount is exempt other than pursuant to subdivision (c), the claim of exemption shall be made pursuant to Article 2 (commencing with Section 703.510). If the judgment debtor also opposes the judgment creditor’s affidavit regarding an amount exempt pursuant to subdivision (c), both exemptions shall be determined at the same hearing, provided the judgment debtor has complied with Article 2 (commencing with Section 703.510).

**§ 704.090. Inmate’s trust account**

704.090. (a) The funds of a judgment debtor confined in a prison or facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority or confined in any county or city jail, road camp, industrial farm, or other local correctional facility, held in trust for or to the credit of the judgment debtor, in an inmate’s trust account or similar account by the state, county, or city, or any agency

thereof, are exempt without making a claim in the amount of one thousand dollars (\$1,000). If the judgment debtor is married, each spouse is entitled to a separate exemption under this section or the spouses may combine their exemptions.

(b) Notwithstanding subdivision (a), if the judgment is for a restitution fine or order imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative on or before September 28, 1994, or Section 1203.04 of the Penal Code, as operative on or before August 2, 1995, or Section 1202.4 of the Penal Code, the funds held in trust for, or to the credit of, a judgment debtor described in subdivision (a) are exempt in the amount of three hundred dollars (\$300) without making a claim.

#### **§ 704.100. Life insurance, endowment, annuity policies**

704.100. (a) Unmatured life insurance policies (including endowment and annuity policies), but not the loan value of such policies, are exempt without making a claim.

(b) The aggregate loan value of unexpired life insurance policies (including endowment and annuity policies) is subject to the enforcement of a money judgment but is exempt in the amount of eight thousand dollars (\$8,000). If the judgment debtor is married, each spouse is entitled to a separate exemption under this subdivision, and the exemptions of the spouses may be combined, regardless of whether the policies belong to either or both spouses and regardless of whether the spouse of the judgment debtor is also a judgment debtor under the judgment. The exemption provided by this subdivision shall be first applied to policies other than the policy before the court and then, if the exemption is not exhausted, to the policy before the court.

(c) Benefits from matured life insurance policies (including endowment and annuity policies) are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

#### **§ 704.110. Public retirement and related benefits and contributions**

704.110. (a) As used in this section:

(1) "Public entity" means the state, or a city, city and county, county, or other political subdivision of the state, or a public trust, public corporation, or public board, or the governing body of any of them, but does not include the United States except where expressly so provided.

(2) "Public retirement benefit" means a pension or an annuity, or a retirement, disability, death, or other benefit, paid or payable by a public retirement system.

(3) "Public retirement system" means a system established pursuant to statute by a public entity for retirement, annuity, or pension purposes or payment of disability or death benefits.

(b) All amounts held, controlled, or in process of distribution by a public entity derived from contributions by the public entity or by an officer or employee of the public entity for public retirement benefit purposes, and all rights and benefits accrued or accruing to any person under a public retirement system, are exempt without making a claim.

(c) Notwithstanding subdivision (b), where an amount described in subdivision (b) becomes payable to a person and is sought to be applied to the satisfaction of a judgment for child, family, or spousal support against that person:

(1) Except as provided in paragraphs (2) and (3), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to an earnings assignment order for support as defined in Section 706.011, or any other applicable enforcement procedure, but the

amount to be withheld pursuant to the assignment order or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052. The paying entity may deduct from the payment being made to the judgment debtor, for each payment made pursuant to an earnings assignment order under this paragraph, an amount reflecting the actual cost of administration caused by the assignment order of up to two dollars (\$2) for each payment.

(3) If the intercept procedure provided for in Section 11357 of the Welfare and Institutions Code is used for benefits that are payable periodically, the amount to be withheld shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052.

(4) If the amount sought to be applied to the satisfaction of the judgment is payable as a lump-sum distribution, the amount payable is subject to the intercept procedure provided in Section 11357 of the Welfare and Institutions Code or any other applicable enforcement procedure.

(d) All amounts received by any person, a resident of the state, as a public retirement benefit or as a return of contributions and interest thereon from the United States or a public entity or from a public retirement system are exempt.

#### **§ 704.113. Public employee vacation credits**

704.113. (a) As used in this section, “vacation credits” means vacation credits accumulated by a state employee pursuant to Section 18050 of the Government Code or by any other public employee pursuant to any law for the accumulation of vacation credits applicable to the employee.

(b) All vacation credits are exempt without making a claim.

(c) Amounts paid periodically or as a lump sum representing vacation credits are subject to any earnings withholding order served under Chapter 5 (commencing with Section 706.010) or any earnings assignment order for support as defined in Section 706.011 and are exempt to the same extent as earnings of a judgment debtor.

#### **§ 704.114. Compliance with order of wage assignment**

704.114. (a) Notwithstanding any other provision of law, service of an earnings assignment order for support, or an order or notice to withhold income for child support on any public entity described in Section 704.110, other than the United States government, creates a lien on all employee contributions in the amount necessary to satisfy a support judgment as determined under Section 695.210 to the extent that the judgment remains enforceable.

(b) The public entity shall comply with any request for a return of employee contributions by an employee named in the order or notice to withhold by delivering the contributions to the clerk of the court in which the support order was awarded or last registered, unless the entity has received a certified copy of an order or administrative notice terminating the earnings assignment order for support.

(c) Upon receipt of moneys pursuant to this section, the clerk of the court, within 10 days, shall send written notice of the receipt of the deposit to the parties and to the local child support agency enforcing any order pursuant to Section 17400 of the Family Code.

(d) Moneys received pursuant to this section are subject to any procedure available to enforce an order for support, but if no enforcement procedure is commenced after 30 days have elapsed from the date the notice of receipt is sent, the clerk shall, upon request, return the moneys to the public entity that delivered the moneys to the court unless the

public entity has informed the court in writing that the moneys shall be released to the employee.

(e) A court shall not directly or indirectly condition the issuance, modification, or termination of, or condition the terms or conditions of, any order for support upon the making of a request for the return of employee contributions by an employee.

**§ 704.115. Private retirement and related benefits and contributions**

704.115. (a) As used in this section, “private retirement plan” means:

(1) Private retirement plans, including, but not limited to, union retirement plans.

(2) Profit-sharing plans designed and used for retirement purposes.

(3) Self-employed retirement plans and individual retirement annuities or accounts provided for in the Internal Revenue Code of 1986, as amended, including individual retirement accounts qualified under Section 408 or 408A of that code, to the extent the amounts held in the plans, annuities, or accounts do not exceed the maximum amounts exempt from federal income taxation under that code.

(b) All amounts held, controlled, or in process of distribution by a private retirement plan, for the payment of benefits as an annuity, pension, retirement allowance, disability payment, or death benefit from a private retirement plan are exempt.

(c) Notwithstanding subdivision (b), where an amount described in subdivision (b) becomes payable to a person and is sought to be applied to the satisfaction of a judgment for child, family, or spousal support against that person:

(1) Except as provided in paragraph (2), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to an earnings assignment order for support as defined in Section 706.011 or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment order or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052.

(d) After payment, the amounts described in subdivision (b) and all contributions and interest thereon returned to any member of a private retirement plan are exempt.

(e) Notwithstanding subdivisions (b) and (d), except as provided in subdivision (f), the amounts described in paragraph (3) of subdivision (a) are exempt only to the extent necessary to provide for the support of the judgment debtor when the judgment debtor retires and for the support of the spouse and dependents of the judgment debtor, taking into account all resources that are likely to be available for the support of the judgment debtor when the judgment debtor retires. In determining the amount to be exempt under this subdivision, the court shall allow the judgment debtor such additional amount as is necessary to pay any federal and state income taxes payable as a result of the applying of an amount described in paragraph (3) of subdivision (a) to the satisfaction of the money judgment.

(f) Where the amounts described in paragraph (3) of subdivision (a) are payable periodically, the amount of the periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law). To the extent a lump-sum distribution from an individual retirement account is treated differently from a periodic distribution under this subdivision, any lump-sum distribution from an account qualified under Section 408A of the Internal Revenue Code shall be treated the same as a lump-sum distribution from an account qualified under Section 408

of the Internal Revenue Code for purposes of determining whether any of that payment may be applied to the satisfaction of a money judgment.

**§ 704.120. Unemployment benefits and contributions, strike benefits**

704.120. (a) Contributions by workers payable to the Unemployment Compensation Disability Fund and by employers payable to the Unemployment Fund are exempt without making a claim.

(b) Before payment, amounts held for payment of the following benefits are exempt without making a claim:

(1) Benefits payable under Division 1 (commencing with Section 100) of the Unemployment Insurance Code.

(2) Incentives payable under Division 2 (commencing with Section 5000) of the Unemployment Insurance Code.

(3) Benefits payable under an employer's plan or system to supplement unemployment compensation benefits of the employees generally or for a class or group of employees.

(4) Unemployment benefits payable by a fraternal organization to its bona fide members.

(5) Benefits payable by a union due to a labor dispute.

(c) After payment, the benefits described in subdivision (b) are exempt.

(d) During the payment of benefits described in paragraph (1) of subdivision (b) to a judgment debtor under a support judgment, the judgment creditor may, through the appropriate local child support agency, seek to apply the benefit payment to satisfy the judgment as provided by Section 17518 of the Family Code.

(e) During the payment of benefits described in paragraphs (2) to (5), inclusive, of subdivision (b) to a judgment debtor under a support judgment, the judgment creditor may, directly or through the appropriate local child support agency, seek to apply the benefit payments to satisfy the judgment by an earnings assignment order for support as defined in Section 706.011 or any other applicable enforcement procedure. If the benefit is payable periodically, the amount to be withheld pursuant to the assignment order or other procedure shall be 25 percent of the amount of each periodic payment or any lower amount specified in writing by the judgment creditor or court order, rounded down to the nearest whole dollar. Otherwise the amount to be withheld shall be the amount the court determines under subdivision (c) of Section 703.070. The paying entity may deduct from each payment made pursuant to an assignment order under this subdivision an amount reflecting the actual cost of administration caused by the assignment order up to two dollars (\$2) for each payment.

**§ 704.130. Disability and health benefits**

704.130. (a) Before payment, benefits from a disability or health insurance policy or program are exempt without making a claim. After payment, the benefits are exempt.

(b) Subdivision (a) does not apply to benefits that are paid or payable to cover the cost of health care if the judgment creditor is a provider of health care whose claim is the basis on which the benefits are paid or payable.

(c) During the payment of disability benefits described in subdivision (a) to a judgment debtor under a support judgment, the judgment creditor or local child support agency may seek to apply the benefit payments to satisfy the judgment by an earnings assignment order for support, as defined in Section 706.011, or any other applicable enforcement procedure, but the amount to be withheld pursuant to the earnings assignment order or

other procedure shall not exceed the amount permitted to be withheld on an earnings assignment order for support under Section 706.052.

**§ 704.140. Damages for personal injury**

704.140. (a) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause of action for personal injury is exempt without making a claim.

(b) Except as provided in subdivisions (c) and (d), an award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

(c) Subdivision (b) does not apply if the judgment creditor is a provider of health care whose claim is based on the providing of health care for the personal injury for which the award or settlement was made.

(d) Where an award of damages or a settlement arising out of personal injury is payable periodically, the amount of such periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

**§ 704.150. Damages for wrongful death**

704.150. (a) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause of action for wrongful death is exempt without making a claim.

(b) Except as provided in subdivision (c), an award of damages or a settlement arising out of the wrongful death of the judgment debtor's spouse or a person on whom the judgment debtor or the judgment debtor's spouse was dependent is exempt to the extent reasonably necessary for support of the judgment debtor and the spouse and dependents of the judgment debtor.

(c) Where an award of damages or a settlement arising out of the wrongful death of the judgment debtor's spouse or a person on whom the judgment debtor or the judgment debtor's spouse was dependent is payable periodically, the amount of such a periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

**§ 704.160. Workers' compensation**

704.160. (a) Except as provided by Chapter 1 (commencing with Section 4900) of Part 3 of Division 4 of the Labor Code, before payment, a claim for workers' compensation or workers' compensation awarded or adjudged is exempt without making a claim. Except as specified in subdivision (b), after payment, the award is exempt.

(b) Notwithstanding any other provision of law, during the payment of workers' compensation temporary disability benefits described in subdivision (a) to a support judgment debtor, the support judgment creditor may, through the appropriate local child support agency, seek to apply the workers' compensation temporary disability benefit payment to satisfy the support judgment as provided by Section 17404 of the Family Code.

(c) Notwithstanding any other provision of law, during the payment of workers' compensation temporary disability benefits described in subdivision (a) to a support judgment debtor under a support judgment, including a judgment for reimbursement of public assistance, the judgment creditor may, directly or through the appropriate local child support agency, seek to apply the temporary disability benefit payments to satisfy the support judgment by an earnings assignment order for support, as defined in Section

5208 of the Family Code, or any other applicable enforcement procedure. The amount to be withheld pursuant to the earnings assignment order for support or other enforcement procedure shall be 25 percent of the amount of each periodic payment or any lower amount specified in writing by the judgment creditor or court order, rounded down to the nearest dollar. Otherwise, the amount to be withheld shall be the amount the court determines under subdivision (c) of Section 703.070.

The paying entity may deduct from each payment made pursuant to an order assigning earnings under this subdivision an amount reflecting the actual cost of administration of this assignment, up to two dollars (\$2) for each payment.

(d) Unless the provision or context otherwise requires, the following definitions govern the construction of this section.

(1) "Judgment debtor" or "support judgment debtor" means a person who is owing a duty of support.

(2) "Judgment creditor" or "support judgment creditor" means the person to whom support has been ordered to be paid.

(3) "Support" refers to an obligation owing on behalf of a child, spouse, or family; or an amount owing pursuant to Section 17402 of the Family Code. It also includes past due support or arrearage when it exists.

#### **§ 704.170. Aid provided to needy persons**

704.170. Before payment, aid provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or similar aid provided by a charitable organization or a fraternal benefit society as defined in Section 10990 of the Insurance Code, is exempt without making a claim. After payment, the aid is exempt.

#### **§ 704.180. Relocation benefits**

704.180. Before payment, relocation benefits for displacement from a dwelling which are to be paid pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code or the federal "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" (42 U.S.C. Sec. 4601 et seq.), as amended, are exempt without making a claim. After payment, the benefits are exempt.

#### **§ 704.190. Financial aid provided to student by educational institution**

704.190. (a) As used in this section, "institution of higher education" means "institution of higher education" as defined in Section 1141(a) of Title 20 of the United States Code, as amended.

(b) Before payment, financial aid for expenses while attending school provided to a student by an institution of higher education is exempt without making a claim. After payment, the aid is exempt.

#### **§ 704.200. Cemetery plot**

704.200. (a) As used in this section:

(1) "Cemetery" has the meaning provided by Section 7003 of the Health and Safety Code.

(2) "Family plot" is a plot that satisfies the requirements of Section 8650 of the Health and Safety Code.

(3) "Plot" has the meaning provided by Section 7022 of the Health and Safety Code.

(b) A family plot is exempt without making a claim.

(c) Except as provided in subdivision (d), a cemetery plot for the judgment debtor and the spouse of the judgment debtor is exempt.

(d) Land held for the purpose of sale or disposition as cemetery plots or otherwise is not exempt.

**§ 704.210. Property not subject to enforcement**

704.210. Property that is not subject to enforcement of a money judgment is exempt without making a claim.

Article 4. Homestead Exemption

**§ 704.710. Definitions**

704.710. As used in this article:

(a) “Dwelling” means a place where a person resides and may include but is not limited to the following:

(1) A house together with the outbuildings and the land upon which they are situated.

(2) A mobilehome together with the outbuildings and the land upon which they are situated.

(3) A boat or other waterborne vessel.

(4) A condominium, as defined in Section 783 of the Civil Code.

(5) A planned development, as defined in Section 11003 of the Business and Professions Code.

(6) A stock cooperative, as defined in Section 11003.2 of the Business and Professions Code.

(7) A community apartment project, as defined in Section 11004 of the Business and Professions Code.

(b) “Family unit” means any of the following:

(1) The judgment debtor and the judgment debtor’s spouse if the spouses reside together in the homestead.

(2) The judgment debtor and at least one of the following persons who the judgment debtor cares for or maintains in the homestead:

(A) The minor child or minor grandchild of the judgment debtor or the judgment debtor’s spouse or the minor child or grandchild of a deceased spouse or former spouse.

(B) The minor brother or sister of the judgment debtor or judgment debtor’s spouse or the minor child of a deceased brother or sister of either spouse.

(C) The father, mother, grandfather, or grandmother of the judgment debtor or the judgment debtor’s spouse or the father, mother, grandfather, or grandmother of a deceased spouse.

(D) An unmarried relative described in this paragraph who has attained the age of majority and is unable to take care of or support himself or herself.

(3) The judgment debtor’s spouse and at least one of the persons listed in paragraph (2) who the judgment debtor’s spouse cares for or maintains in the homestead.

(c) “Homestead” means the principal dwelling (1) in which the judgment debtor or the judgment debtor’s spouse resided on the date the judgment creditor’s lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor’s spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a dwelling within the six-month period

provided by Section 704.720, “homestead” also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor’s spouse resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.

(d) “Spouse” does not include a married person following entry of a judgment decreeing legal separation of the parties, unless such married persons reside together in the same dwelling.

#### **§ 704.720. Extent of homestead exemption**

704.720. (a) A homestead is exempt from sale under this division to the extent provided in Section 704.800.

(b) If a homestead is sold under this division or is damaged or destroyed or is acquired for public use, the proceeds of sale or of insurance or other indemnification for damage or destruction of the homestead or the proceeds received as compensation for a homestead acquired for public use are exempt in the amount of the homestead exemption provided in Section 704.730. The proceeds are exempt for a period of six months after the time the proceeds are actually received by the judgment debtor, except that, if a homestead exemption is applied to other property of the judgment debtor or the judgment debtor’s spouse during that period, the proceeds thereafter are not exempt.

(c) If the judgment debtor and spouse of the judgment debtor reside in separate homesteads, only the homestead of one of the spouses is exempt and only the proceeds of the exempt homestead are exempt.

#### **§ 704.730. Amount of homestead exemption**

704.730. (a) The amount of the homestead exemption is one of the following:

(1) Fifty thousand dollars (\$50,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) Seventy-five thousand dollars (\$75,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) One hundred twenty-five thousand dollars (\$125,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled and as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

(C) A person 55 years of age or older with a gross annual income of not more than fifteen thousand dollars (\$15,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor’s spouse, of not more than twenty thousand dollars (\$20,000) and the sale is an involuntary sale.

(b) Notwithstanding any other provision of this section, the combined homestead exemptions of spouses on the same judgment shall not exceed the amount specified in paragraph (2) or (3), whichever is applicable, of subdivision (a), regardless of whether the spouses are jointly obligated on the judgment and regardless of whether the homestead consists of community or separate property or both. Notwithstanding any other provision of this article, if both spouses are entitled to a homestead exemption, the exemption of proceeds of the homestead shall be apportioned between the spouses on the basis of their proportionate interests in the homestead.

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## Article 5. Declared Homesteads

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